

IN THE MATTER OF:

Glen Morgan Drum Site
Tank Branch Road
Glen Morgan, West Virginia

FIRST COMMUNITY BANK, INC.

Docket No. III-90-04-DC

Respondent.

Proceeding Under Sections 106(a)
and 122 of the Comprehensive
Environmental Response, Compens-
ation, and Liability Act of 1980,
42 U.S.C. §§ 9606(a) and 9622, as
amended by the Superfund
Amendments and Reauthorization
Act of 1986, Pub. L. No. 99-499,
100 Stat. 1613 (1986).

ADMINISTRATIVE ORDER BY CONSENT

The parties to this Administrative Order by Consent (hereinafter, "Consent Order" or "Order"), First Community Bank, Inc. (hereinafter, the "Bank" or "Respondent") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION

1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), delegated to the EPA by Executive Order No. 12,580, 52 Fed. Reg. 19 (1987), and further delegated to the Regional Administrators of EPA. This Order pertains to property located on Tank Branch Road, in Glen Morgan, West Virginia. This property will hereinafter be referred to as "the Site", and is further described in paragraph 3.2 below.

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1.2 The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order.

1.3 The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 C.F.R. Part 300 and CERCLA.

1.4 The Respondent consents to, and will not contest EPA's jurisdiction to issue or to enforce, this Consent Order.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site and to properly dispose of the hazardous substances located there.

III. FINDINGS OF FACT

3.1 The Bank, a West Virginia corporation, arranged for the transportation and or disposal of hazardous substances from certain properties it had foreclosed on. The Bank arranged with Mr. Claude Linzy for such disposal. Mr. Linzy disposed of the substances at the Site.

3.2 The Site is in a residential area on Tank Branch Road in Raleigh County, Glen Morgan, West Virginia. Onsite are two trailers and a two car garage. One trailer has been vandalized and is unoccupied and the second trailer is occupied.

3.3 The Site is owned by Joseph Linzy and is being maintained by Claude Linzy. Joseph Linzy and Claude Linzy both reside at 210 Surface Drive, Charleston, West Virginia.

3.4 On September 18, 1988 the West Virginia Department of Natural Resources (WV DNR) inspected the Site. The WV DNR discovered numerous fifty-five gallon drums lying haphazardly around the Site. Drums were also stored in a box truck inside the garage. Some of the drums on site were labeled "trichloroethylene" (TCE). Several drums were lying on their sides spilling what appeared to be grease. Two thirty-gallon drums were rolled over a steep bank and several five-gallon pails containing unidentified material were found next to the abandoned trailer.

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3.5 WV DNR's sample results revealed that one of the drums labeled "trichloroethylene" contained pure TCE. The material in two of the drums stored in the box truck had flash points of 49 and 52 degrees fahrenheit. One of the thirty gallon drum's contents had a pH of 14 and the material in one of the five gallon buckets had a flashpoint of 78 degrees fahrenheit.

3.6 On November 18, 1988 the WV DNR issued an Administrative Order to Claude Linzy requiring him to cleanup the Site. Mr. Linzy responded by moving all the drums inside the garage onsite.

3.7 An inspection by the EPA on March 28, 1989 identified the following materials onsite: twelve fifty-five gallon drums of a grease/oil and soil mixture; two thirty gallon drums of caustic material; twelve drums labeled "isopropanol anhydrous" or "refrigerant" staged in a box truck; two fifty-five gallon drums of what is believed to be pure TCE and approximately twenty-five fifty-five gallon drums believed to contain residual materials. All materials are currently staged in the garage onsite.

3.8 Sample results from EPA's March 28, 1989 inspection revealed that one drum of the oil/grease and soil mixture is contaminated with 0.85 percent of TCE and a second drum is contaminated with 1.6 percent of TCE. EPA also found that the material in the two thirty gallon drums of caustic material had a pH of fourteen.

3.9 Chronic exposure through inhalation or ingestion of TCE may lead to conditions such as irregular heart functioning in the form of arrhythmias, and some deleterious effects on the central nervous system. TCE is also a suspected human carcinogen.

3.10 The caustic material identified onsite with a pH of 14 is capable of causing severe burns if a person came in direct contact with this material.

3.11 TCE is listed in 40 C.F.R § 302.4. It is therefore a hazardous substance pursuant to Sections 101 and 102 of CERCLA, 42 U.S.C. §§ 9601 and 9602.

3.12 The caustic material in the two thirty gallon drums is a hazardous waste pursuant to 40 C.F.R. Part 261.22. It is therefore a hazardous substance pursuant to Section 101(14) of CERCLA, 42 U.S.C § 9601.

3.13 The material stored in the box truck is a characteristic hazardous waste because the material is ignitable under the standards of 40 C.F.R. § 261.21. It is therefore a hazardous substance pursuant to 42 U.S.C. § 9601.

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3.14 The closest residence to the garage containing the hazardous substances is less than twenty-five feet away and EPA estimates there are approximately 20 additional residences within a radius of fifteen hundred feet from the Site.

3.15 After reviewing all relevant information, on August 2, 1989, EPA On-Scene Coordinator, Jerry Saseen, in accordance with 40 C.F.R. § 300.65 determined that the hazardous substances at the Site posed an actual or potential threat of exposure to the nearby population, animals, or food chain and that there was a threat of release and threat of fire or explosion.

3.16 On August 28, 1989, after reviewing conditions at the Site, N.D. Woods, Deputy Fire Marshall for the State of West Virginia, determined that the conditions at the Site "do create a fire hazard and corrective action should be taken as soon as possible".

3.17 On August 2, 1989, EPA Region III's Regional Administrator authorized \$296,000 of CERCLA funds to abate the threat.

IV. CONCLUSIONS OF LAW

4.1 The Glen Morgan Drum Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.2 The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 Respondent either transported hazardous substances to the Site, arranged for the treatment or disposal of hazardous substances at the Site, or arranged for transport of hazardous substances to the Site for treatment or disposal, and is liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

4.4 "Hazardous Substances", as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Glen Morgan Drum Site and are currently present at the Site.

4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release", as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, the Regional Administrator has determined that:

5.1 The actual and/or threatened release of hazardous substances at or from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The actions required by this Consent Order are necessary to protect the public health, welfare and the environment.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent, or EPA or any combination thereof. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or its responsibilities under this Consent Order.

6.2 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order, and shall condition such contracts on compliance with the terms and conditions of this Order.

6.3 Each of the undersigned representatives of Respondent certifies that he or she is fully authorized to enter into the terms of this Order and to execute and legally bind the Respondent to this Consent Order.

VII. NOTICE TO THE STATE

7.1 Notice of issuance of this Order has been given to the State of West Virginia, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

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VIII. WORK TO BE PERFORMED

8.1 Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), Respondent is ordered to and hereby agrees to commence and complete performance of the following measures within the time periods specified.

8.2 Within five (5) business days of the effective date of this Order, Respondent shall complete the following:

a. Retain a qualified contractor to conduct the necessary response activities identified in this Order. Prior to the initiation of Site work, Respondent shall notify EPA in writing regarding the identity and qualifications of the person or persons who will be primarily responsible for carrying out the terms of this Order. The supervisory personnel, contractors, and subcontractors are subject to approval by EPA. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor if EPA believes they are not qualified to perform the response work. In the event of a disapproval by EPA, Respondent shall notify EPA within five (5) days of receipt of EPA disapproval of the supervisory personnel, contractor or subcontractor who will replace the one disapproved by EPA;

b. Obtain a West Virginia hazardous waste generator identification number; and,

c. Select a Project Coordinator to coordinate the actions of Respondent and act as the Respondent's spokesperson. Respondent shall notify EPA of such selection.

8.3 Within ten (10) business days of the effective date of this Order, Respondent shall Submit a Work Plan ("WP") to the EPA for immediate response measures to be implemented at the Site and shall include a schedule of operations for expeditious performance of the work. The WP shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be subject to approval by EPA according to the provisions of paragraphs 8.4. and 8.7. below. The following are the minimum specific actions that are to be detailed in the WP:

a. A Site Health and Safety Plan ("Safety Plan") to protect the health of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the work specified herein;

b. A plan to identify and segregate materials at the Site and properly dispose of the materials within sixty days of receipt of WP approval;

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c. A plan to take two composite samples from the floor of the garage described in paragraph 3.2 of this Order and to analyze them, in order to identify possible hazardous substances located there;

d. A plan to provide site security;

e. A plan to provide fire protection; and

f. A schedule for expeditiously carrying out the plan.

8.4 The EPA shall review the WP and notify the Respondent of EPA's approval or disapproval of the WP. In the event of disapproval, the EPA shall specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the WP to EPA within five (5) business days of receipt of EPA disapproval. Approval, disapproval and/or modification by EPA of the subsequent WP submission shall be according to the provisions of Paragraph 8.7. below.

8.5 Within five (5) business days of receipt from EPA of written approval of the WP, the Respondent shall begin implementation of the WP in accordance with the WP and the schedule therein, and shall further conduct and complete the actions required in the WP in accordance with the approved WP and schedule therein.

8.6 Documents, including work plans, reports, sampling results and other correspondence to be submitted pursuant to this Order shall be sent certified or express mail to EPA Project Officer, Peter Kho, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 pursuant to Paragraph 9.1.

8.7 All reports, plans, specifications, schedules and attachments required by this Order are subject to EPA approval and shall be incorporated into this Order upon approval by EPA. In the event that EPA disapproves any required submission, EPA shall specify the deficiencies in writing. Within five (5) business days of receipt of EPA disapproval, Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA retains the right to submit its own modifications to the Respondent and require the Respondent to implement such modifications, or to perform the response action and seek reimbursement of its costs from Respondent and/or take any other action authorized by law. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments or non-compliance with

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EPA submitted modifications in the case of subsequent disapprovals as specified in this paragraph shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance shall be made by EPA.

8.8 Respondent shall provide to EPA upon request any and all information resulting from and/or pertaining to action taken by Respondent pursuant to this Order including, but not limited to, analytical data, Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), identities of treatment, storage and/or disposal facilities used, identities of transporters used, and identities of any contractors and subcontractors used. Nothing herein shall be interpreted as limiting the inspection authority of EPA under Federal law.

8.9 Within ten (10) calendar days of the completion of all of the actions required in the approved WP, Respondent shall submit a written report to EPA detailing the actions taken, and notifying EPA of such completion. EPA shall inspect the Site for adequacy of Respondent's performance of such actions. EPA shall notify Respondent, in writing, of any deficiencies and the actions required to correct these deficiencies at the Site. Such required actions shall be consistent with the NCP and all applicable Federal laws or regulations. Respondent shall take the necessary corrective measures to address any deficiencies identified by EPA.

8.10 Respondent shall not remove any waste materials from the Site, except in conformance with the terms of this Order and any applicable Federal, state or local laws or regulations.

8.11 Beginning (7) seven calendar days subsequent to the date of receipt of EPA approval of the WP and continuing until EPA advises Respondent that the work is complete, the Respondent shall provide EPA with a progress report for each preceding 7 day period. The progress reports shall include, at a minimum: 1) a description of the actions that have been taken toward achieving compliance with this Order; 2) a description of all data anticipated and activities scheduled for the next 7 days; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the Work Plan made in accordance with Section XVIII to this Order, during the reporting period.

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8.12 Within ten (10) business days of the effective date of this Order, Respondent shall complete the following:

a. Provide EPA documentation evidencing that all supervisory personnel, contractors and/or subcontractors performing cleanup activities at the Site shall meet the necessary Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120.

IX. DESIGNATED PROJECT COORDINATORS

9.1 EPA and the Respondent shall each designate a Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators by Certified Mail.

9.2 The Project Coordinator for EPA is:

Peter Kho, Enforcement Project Officer
U.S. Environmental Protection Agency
CERCLA Removal Enforcement Section
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-9800

The designated Project Coordinator for Respondent is:

James F. Duranti
Belpar Environmental, Inc.
P.O. Box 8278
South Charleston, WV 25303-8278
(304) 744-1591

9.3 EPA and the Respondent shall each have the right to change their respective Project Coordinator. Such a change shall be accomplished by notifying the other party in writing at least five days prior to the change.

9.4 The EPA-designated Project Coordinator and/or EPA's On-Scene Coordinator shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Consent Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. § 300.65(b). The absence of the EPA Project Coordinator or On-Scene Coordinator from the Site shall not be cause for the
stoppage or delay of work.

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X. QUALITY ASSURANCE

10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved Work Plan. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

11.1 To the extent that property wherein activities must be undertaken pursuant to the terms and conditions of this Order is presently owned or controlled by parties other than Respondent to this Consent Order, the Respondent will use its best efforts to obtain Site access arrangements from the present owners within ten days of the effective date of this Order. Such agreements shall provide reasonable access for EPA, and the Respondent and their authorized representatives, including for those activities outlined in 11.2 below. In the event that the property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA within five (5) days of the failure to obtain access. The Respondent shall also notify EPA of all efforts to obtain such agreements. EPA may then take steps to provide such access.

11.2 EPA and/or its authorized representatives shall have the authority to enter and freely move about the Site at all reasonable times for any purpose including, inter alia: inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit EPA and its representatives to inspect and copy all records, files, photographs, documents, and other writing, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. Nothing herein shall be interpreted as limiting the inspection authority of EPA under federal law.

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XII. DISPUTE RESOLUTION

12.1 If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action.

12.2 EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA shall provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this section XII.

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

13.1 For each day or portion thereof that the Respondent fails to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substance Superfund. Checks shall be addressed to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

Payment shall be made by cashier's or certified check within five calendar days of receipt of demand. A copy of the transmittal letter shall be sent to the EPA Project Coordinator. A copy of the transmittal letter and check shall be sent to: EPA Region III Hearing Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

13.2 Stipulated penalties shall accrue in the amount of \$1,000.00 per calendar day per violation for each day of the first week, and \$2,000.00 for each day thereafter for the following twenty-one days. Stipulated penalties shall then accrue in the amount of \$5,000 per calendar day for violations occurring on any day after the 28th day. The stipulated penalties set forth in this Section do not preclude EPA from

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pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order, including, but not limited to, civil penalties up to \$25,000 per day as set forth in CERCLA.

XIV. FORCE MAJEURE

14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than one (1) business day after any such delay or anticipated delay and in writing no later than seven (7) days after Respondent becomes aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, the reasons the delay is beyond the control of Respondent, if appropriate, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

14.2 Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of its obligations under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, that cannot be overcome by due diligence, the schedule affected by the delay shall be extended for a period necessary to complete the work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent.

14.3 Failure of the Respondent to comply with the notice requirements of paragraph 14.1 above shall constitute a waiver of the Respondent's right to invoke the benefits of this section with respect to that event.

14.4 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the

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reasonable control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Paragraph XII of this Consent Order, "Dispute Resolution".

14.5 The Respondent shall have the burden of proving that the delay was caused by circumstances beyond its control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid and minimize delay.

XV. RESERVATION OF RIGHTS

15.1 Except as expressly provided in this Consent Order: (1) EPA reserves all rights and defenses it may have; and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and the imposition of statutory penalties.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of work performed by the Respondent and reserves its right to request that the Respondent perform response actions in addition to those required by this Order, if it determines that such actions are necessary. In the event that the Respondent declines to perform such additional actions, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred.

XVI. OTHER CLAIMS

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

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16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. Section 9611(a)(2).

16.3 By consenting to the issuance of this Consent Order the Respondent waives any claim to reimbursement it may have under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b).

XVII. OTHER APPLICABLE LAWS

17.1 All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

18.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.

18.2 This Consent Order may be amended by mutual agreement of EPA, and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such amendments are signed by EPA. Minor modifications to the WP and schedule approved pursuant to this Order may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII "Delay in Performance/and Stipulated Penalties", above. Determination(s) of non-compliance shall be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order.

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XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities pursuant to this Order.

XX. REIMBURSEMENT OF COSTS

20.1 After the completion of the work required pursuant to this Consent Order, EPA shall submit to Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents, or contractors in connection with EPA's oversight of the work to be done by Respondent and their contractors under the terms of this Consent Order.

20.2 Respondent shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the EPA Hazardous Substances Superfund. Checks shall specifically reference the Site and shall be addressed as specified in Section XIII of this Order.

XXI. CERTIFICATION OF COMPLIANCE

21.1 Any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Consent Order, which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by an officer of Respondent.

21.2 The certification of the Respondent required by paragraph 21.1 above shall be in the following form:

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"I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete."

Signature: _____
Name(print): _____
Title: _____

XXII. CALCULATION OF TIME

22.1 Any reference to "days" in this Order shall mean calendar days, unless otherwise specifically provided herein.

XXIII. TERMINATION AND SATISFACTION

23.1 The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been completed.

XXIV. SIGNATURE BY PARTIES

24.1 Respondent shall execute the Order on a separate signature page and shall return this signature page to EPA.

24.2 Each signature page to this Order shall be deemed as an original, but all of which together shall constitute one and the same instrument.

FIRST COMMUNITY BANK, INC.:

BY: 

Name: James L. Harrison
Title: President

DATE: 10/31/89

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THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BY: 

Edwin B. Erickson
Regional Administrator
Region III
U.S. Environmental Protection
Agency

DATE: 11/21/87

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